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No. 00-675

In The
**SUPREME COURT OF THE UNITED STATES**

**BILL JONES, Secretary of State of the State of California, and MISCHELLE TOWNSEND, Registrar of Voters of Riverside County, California,**

**Petitioners**

**v.**

**MIKE SCHAEFER,**

**Respondent**

On Petition For A Writ Of Certiorari
To The United States Court of Appeals
For The Ninth Circuit

# ANSWER TO PETITION FOR WRIT OF CERTIORARI

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## THE COURT SHOULD GRANT CERTIORARI

Respondent Mike Schaefer, a resident of the State of Nevada, agrees with Petitioners that this Court should grant certiorari. Opposition to certiorari would be inconsistent with Schaefer's contention that any 25 year old person who has been a United States citizen for at least 7 years has a right to run for Congress (United States House of Representatives) in any state without having to become an inhabitant of such state prior to the election. Likewise, any 30 year old person who has been a United States citizen for at least 9 years has a right to run for the United States Senate in any state without having to become an inhabitant of such state prior to the election.

In order for Schaefer to run for Congress in New York, Maryland, Nebraska, Arizona, New Jersey, or any other state, without fear that some existing or future state statute may preclude him from running unless he moves to such state and establishes residency there, Schaefer needs the decision of the Ninth Circuit, Schaefer v. Townsend, 215 F.3d 1031 (9th Cir. 2000), to become a nationwide decision by this Supreme Court. Schaefer's major argument is that the Qualifications Clause of the United States Constitution guarantees the right of any such citizen (25 years old and a citizen for at least 7 years) to run for Congress in any state of the Union. The same right not to have to become an inhabitant prior to the election applies to the U.S. Senate.

To make sure that such a right exists throughout the United States Schaefer needs a decision from this Court affirming the judgment of the United States Court of

Appeals for the Ninth Circuit. Opposition to the certiorari petition would be inconsistent with Schaefer's argument on the merits. Furthermore, Schaefer very much wants to run for Congress in any district in the United States which may become attractive to him politically without regard to its location.

Schaefer views the House of Representatives as a national legislature whose members should vote for the national interest, not local interests. Cities, towns, counties, and states serve local interests; the United States Congress is for the nation as a whole. Accordingly, nationally recognized figures ought to be able to run for national office anywhere. There is a trend in that direction. Previously Robert F. Kennedy won a Senate seat in New York and more recently First Lady Hillary Rodham Clinton won a Senate seat in New York. The U.S. Senate, like the House of Representatives, should be a legislative body that reflects national interests, not local interests.

With the development of jet airplanes, satellite television, and the Internet, one can get information instantly anywhere in the country and go to any place quickly. There is no need for a candidate to have to live in a particular geographic area for a set amount of time in order to run for a Congressional seat. Candidates can become familiar with the issues without having to be located physically in any particular spot.

It was originally thought that representatives represent the land. Baker v. Carr , 369 U.S. 186; 82 S.Ct. 691 (1962); Wesberry v. Sanders, 376 U.S. 1; 84 S.Ct. 526 (1964); and Reynolds v. Sims, 377 U.S. 533; 84 S.Ct. 1362

(1964) put that archaic notion to rest: "Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. . . ." Id. at 562. Now we should recognize that the interests of such people are their national interests as U.S. citizens, not local interests, which are better expressed through local government. This Court has recently begun to recognize the importance of separating federal interests from local interests. See e.g., United States v. Morrison, __ U.S. ___, 120 S. Ct. 1740 (2000) (Congress lacks authority to adopt Violence Against Women Act); United States v. Lopez, 514 U.S. 549, 131 L.Ed.2d 626, 115 S.Ct. 1624 (1995) (Congress lacks authority to adopt statute prohibiting possession of a firearm in a school zone); Alden v. Maine, ___ U.S. ___, 119 S.Ct. 2240 (1999) (Congress lacks authority to subject states to federal wage laws).

In U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 783, 131 L.Ed.2d 881, 115 S.Ct. 1842, 1845 (1995) this Court recognized the fundamental national nature of our federal legislature when it struck down the Congressional term limit provision of the Arkansas Constitution:

> ". . . Allowing individual states to adopt their own qualifications for congressional service would be inconsistent with the Framers' vision of a uniform National Legislature representing the people of the United States. . . ."

It is noteworthy that this Court stated that the ". . . National Legislature represent[s] . . . the people of the

United States. . . ." This Court did not say that the National Legislature represents Congressional districts. It is important that national legislators vote in the national interest, not try to obtain benefits for local areas. That leads to Pork Barrel legislation. It leads to vote trading, one of the most unethical and anti democratic attributes of some legislators. A congressional vote must be based upon what is best for the country as a whole.

Petitioner notes that this Court granted certiorari in U.S. Term Limits, Inc. v. Thornton, supra and then affirmed the judgments of the Arkansas Supreme Court. Thus, it is not unusual to grant certiorari in order to affirm a lower court judgment. For this reason respondents frequently support the granting of certiorari. The decision in U.S. Term Limits, Inc. v. Thornton, supra, was close (5 to 4). Justice Thomas wrote a lengthy and eloquent dissent.

In Federal Election Committee v. Colorado Republican Federal Campaign Committee, ___ U.S. ___, L.Ed.2d ___, ___ S.Ct. ___ (2000) (No. 00-191), the respondent urged this Court to grant the petition for writ of certiorari so that the decision of the Tenth Circuit would become national. This Court granted certiorari on October 10, 2000. This Court's prior ruling in the case is reported at Colorado Republican Campaign Com. v. FEC, 518 U.S. 604, 135 L.Ed.2d 795, 116 S.Ct. 2309 (1966).

This Court recently affirmed without argument the 2 to 1 decision of the United States District Court for the District of Columbia that residents of the District of Columbia may not elect members of Congress. See

Alexander v. Mineta, ___ U.S. ___, ___ L.Ed.2d ___, ___ S.Ct. ___ (2000) (No. 99-2062) and Adams v. Clinton, ___ U.S. ___, ___ L.Ed.2d ___, ___ S.Ct. ___ (2000) (No. 00-97) issued on October 16, 2000.

This Court has been involved recently with a number of "political" cases. On November 6, 2000, one day prior to the recent national election, this Court heard oral arguments in Gralike v. Cook, No. 99-929 to decide whether Missouri can require Congressional candidates to actively support term restrictions or be branded as opponents of the cause on state-issued election ballots.

The instant case presents a true controversy because respondent Schaefer did want to run for the open seat in California, but did not want to move to California prior to the election. The issue is important and should be decided by this Court. Just last term the Petitioner here, California Secretary of State Bill Jones, was the respondent in California Democratic Party v. Jones, ___U.S. ___, 120 S.Ct. 2402 (2000), where this Court held that California's blanket primary statute violated the First Amendment right of political parties to associate.

The instant case is important for the whole nation and a uniform rule is necessary. Otherwise, nationally known political figures will only be able to run for Congress or the Senate in states the statutes of which do not restrict such candidates or in states where restrictive statutes have been declared unconstitutional. There ought to be uniformity in federal elections.

Respondent understands that Petitioners' point is that the United States is a government of limited, delegated authority and that the states are to make the rules regarding federal elections under the Elections Clause. Whether they are right or wrong should be decided by this Court. The importance of the states in national elections was recently made clear when the elections law of the State of Florida broke the deadlock between Governor George W. Bush and Vice-President Al Gore regarding their campaigns for President. Indeed, the election highlighted the fact that the states' Electoral College is what determines federal elections for President, not the national popular vote.

Respondent concedes that there is no Supreme Court precedent squarely on point but will base its argument on the merits upon this Court's decision in U.S. Term Limits, Inc. v. Thornton, supra. In the case this Court, albeit by a thin majority, held that Arkansas could not add a qualification for election to the House of Representatives - that a candidate not have served 3 terms in the House of Representatives. This was a qualification for the office which was not listed in the Constitution.

The Petitioners contend that U.S. Term Limits v. Thornton is distinguishable from the instant case because California's prohibition against non-resident candidates is not a disqualification but rather is a procedural rule authorized by the Elections Clause. Petitioners are plainly wrong - the California statute in question disqualifies non-residents from running for Congressional seats in California. Put another way, it adds a qualification for the office - that the candidate be a California resident prior to the election.

Petitioners complain that the Ninth Circuit below barely mentioned Storer v. Brown, 415 U.S. 724, 39 L.Ed.2d 714, 94 S.Ct. 1274 (1974), but the case is not on point. It upheld a California statute which prohibited persons from running for office as independent candidates if they were registered to vote with a political party within the prior year. The statute was designed to protect the primary election process and was necessary to maintain the integrity of political parties. The case does not support Petitioners here. The statute in question was authorized by the Elections Clause, unlike the statute at issue in the instant case.

For the foregoing reasons, certiorari should be granted. Of course, on the merits respondent will file a brief urging affirmance.

Respectfully submitted

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Mike Schaefer